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BEFORE THE DEPARTMENT OF CORPORATIONS  
OF THE STATE OF CALIFORNIA

In the Matter of	)	FILE NO. 126812
	)	
THE CALIFORNIA CORPORATIONS	)	
COMMISSIONER,	)	
	)	STATEMENT IN SUPPORT OF ORDER
Complainant,	)	LEVYING ADMINISTRATIVE PENALTIES
v.	)	PURSUANT TO CORPORATIONS CODE
	)	SECTION 25252
MARK H. HULL,	)	
	)	
Respondent.	)	
	)	
	)	
	)	

Wayne Strumpfer, the Acting California Corporations Commissioner (“Commissioner”) of the Department of Corporations (“Department”) alleges and charges as follows:

1. Mark H. Hull (“Hull”) holds a valid and unrevoked investment adviser certificate issued by the Commissioner pursuant to Corporations Code section 25230 on February 17, 1994. As of September 5, 2003, Hull’s investment advisory business was located at 1633 West Lewis Street, San Diego, California 92103. Hull operates his investment adviser as a sole proprietor.

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2. On or about March 20, 2003, the Commissioner commenced a regulatory examination of Hull. The examination revealed violations of regulations promulgated pursuant to the Corporate Securities Law of 1968, found at Corporations Code section 25000 et seq.

3. These violations included Hull's failure to file annual financial reports with the Commissioner (Cal. Code Regs., tit. 10, § 260.241.2, subd. (a)), failure to file interim reports (Cal. Code Regs., tit. 10, § 260.241.2, subd. (d)(2)(A)(3)), and Hull's failure to prepare and maintain monthly records of trial balances and computations of net capital and aggregate indebtedness or of minimum net worth (Cal. Code Regs., tit. 10, § 260.241.3, subd. (j)). The books and records requirements and the annual report filing requirements provide the Department with a regulatory mechanism to validate a firm's liquidity and financial integrity to ensure that licensees maintain the necessary net capital for the protection of the public. Hull's violation of these books and records provisions prevented the Department from determining, as part of its regulatory examination, if Hull met the capital requirements imposed by the Corporate Securities Law of 1968 and the regulations enacted thereunder.

4. Corporations Code section 25241 provides that investment advisers are required to maintain books and records that are subject to examination, and to file such reports as required by, the Commissioner. Corporations Code section 25241, at the time of the March 20, 2003 regulatory examination, provided, in relevant part, the following<sup>1</sup>:

[E]very broker dealer and every investment adviser licensed under Section 25230 shall make and keep accounts, correspondence, memorandums, papers, books, and other records and shall file financial and other reports as the commissioner by rule requires . . . .

5. California Code of Regulations, title 10, section 260.241.2, subdivision (a) requires the filing of an annual report by certain investment advisers. Subdivision (a)(2) of section 260.241.2, at the time of the March 20, 2003 regulatory examination, provided, in relevant part, the following:

(a) General Rule. Subject to the provisions of Subsection (c) of this section, . . . every licensed investment adviser subject to the provisions of Section 260.237.1 of these rules, shall file an annual financial report containing the information required by a form or forms to be supplied or approved by the Commissioner, as follows:

<sup>1</sup> Various provisions of the Corporations Code and California Code of Regulations, title 10, were amended and became effective April 3, 2003. This action relates to acts that occurred under statutes and rules prior to the effective date of the amendments.

...

(2) The annual report for investment advisers shall contain a Statement of Financial Condition. Supporting schedules shall contain computations of net capitals, aggregate indebtedness and ratios required under Section 260.237.1 and the certificate of the accountant required under subsection (e) of Section 260.237 of these rules.

6. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3) requires the filing of interim reports under certain conditions. California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3), at the time of the March 20, 2003 examination, provided the following:

(d) Interim reports.

(2) Every investment adviser subject to the provisions of Section 260.237.1 of these rules shall file a report furnished or approved by the Commissioner within 15 days after:

(A) Its tangible net capital is reduced to less than 120% of its required minimum tangible net capital . . .

(3) The report required by subsections (d)(1) and (d)(2) of this section shall be as of a date within the 15 day period. Additional reports shall be filed on the same from within 10 days after each subsequent monthly accounting period until three successive months have elapsed during which none of the conditions specified in subsection (d)(1) or (d)(2) of this section have occurred.

7. California Code of Regulations, title 10, section 260.241.3 requires that investment advisers maintain specific books and records. At the time of the March 20, 2003 examination, subdivision (j) of section 260.241.3, provided the following:

(j) Any investment adviser who is subject to the minimum financial requirements of Section 260.237.1 shall, in addition to the records otherwise required under this section, maintain a record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computations of net capitals and aggregate indebtedness pursuant to Section 260.237.1 of these rules (as of the trial balance date). The trial balances and computations shall be prepared currently at least once a month.

8. At the time of the March 20, 2003 regulatory examination, California Code of Regulations, title 10, section 260.237.1, contained the capital requirements for investment advisers. Subdivision (a)(2) of section 260.237.1 provided, in relevant part, as follows:

(a) No investment adviser who has any power of attorney from any investment advisory client to execute transactions . . . shall permit its total aggregate indebtedness to exceed 500%

1 of its tangible net capital or permit its current aggregate indebtedness to exceed its current net  
2 capital; and,  
3 . . .

4 (2) If the investment adviser has any power of attorney from any investment advisory client  
5 to execute transactions and does not have regular or periodic custody or possession of any of  
6 its investment advisory clients' securities or funds, except the receipt of prepaid subscriptions  
7 for periodic publications, or other investment advisory services, it shall at all times have and  
8 maintain tangible net capital of not less than \$5,000 . . .

9 Subdivision (c) of section 260.237.1 provided that for purposes of section 260.237.1,  
10 subdivision (a), all financial information shall be determined in accordance with generally accepted  
11 accounting principles.

12 9. The Department's examiner found during the regulatory examination on March 20,  
13 2003, that Hull had discretionary authority and power of attorney over advisory client accounts to  
14 execute transactions and, therefore, Hull was required to meet the net capital requirements provided  
15 for under California Code of Regulations, title 10, section 260.237.1, subdivision (a)(2), and to show  
16 proof of compliance with this regulation by filing annual financial reports, in accordance with  
17 California Code of Regulations, title 10, section 260.241.2, subdivision (a). Hull was also required to  
18 prepare and maintain monthly proof of ledger account money balances and either monthly  
19 computations of net capitals and aggregate indebtedness, or monthly computations of minimum net  
20 worth, in accordance with California Code of Regulations, title 10, section 260.241.3, subdivision (j).  
21 At the time of the March 20, 2003 examination, Hull had not prepared and maintained monthly proof  
22 of ledger account money balances and either monthly computations of net capitals and aggregate  
23 indebtedness, or of minimum net worth, in violation of California Code of Regulations, title 10,  
24 section 260.241.3, subdivision (j). The Department examiner also found that Hull had failed to  
25 submit his annual financial reports for the years 2000, 2001 and 2002. As a result of Hull's violation  
26 of California Code of Regulations, title 10, sections 260.241.2(a) and 260.241.3(j), the Department's  
27 examiner was unable to determine if Hull, at the time of the examination, was in compliance with net  
28 capital requirements of section 260.237.1.

10. Moreover, the Department's examiner also found during the regulatory examination  
on March 20, 2003, that Hull's tangible net capital as of February 28, 2003 fell below 120% of the

1 required tangible net capital and, therefore, Hull was required to file interim reports in accordance  
2 with California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3). At the  
3 time of the March 20, 2003 examination, Hull had not filed an interim report for February 2003.

4 11. On June 23, 2003, the Department sent Hull a regulatory letter explaining the  
5 violations discovered during the March 20, 2003 examination, including violations of California  
6 Code of Regulations, title 10, sections 260.241.3, subdivision (j), and 260.241.2, subdivisions (a) and  
7 (d)(2)(A)(3). Hull responded by letter dated August 9, 2003 and enclosed the requested annual  
8 reports. In his letter, Hull stated that that his office had not filed the reports due to an oversight. He  
9 vowed to file timely reports in the future. Additionally, Hull declared his intention to abide by all  
10 relevant code sections.

11 12. A prior regulatory examination of Hull conducted by the Department in 1998 revealed,  
12 in part, identical regulatory violations. On July 8, 1998, the Department sent a letter notifying Hull,  
13 among other things, of his failure to prepare and maintain monthly records of trial balances and  
14 computations of net capitals and aggregate indebtedness in violation of California Code of  
15 Regulations, title 10, section 260.241.3, subdivision (j). Hull had also failed to file annual reports in  
16 violation of California Code of Regulations, title 10, section 260.241.2, subdivision (a), and failed to  
17 file interim reports when his tangible net capital fell below the minimum requirements in violation of  
18 California Code of Regulations, title 10, section 260.241.2, subdivision (d)(2)(A)(3). Hull replied by  
19 letter dated July 14, 1998 and declared that he would comply with all relative statutes. Hull  
20 specifically stated that he would begin to file annual reports and maintain the net capital and  
21 aggregate indebtedness reports at least monthly.

22 13. Corporations Code section 25252, which became effective January 1, 1999, authorizes  
23 the Commissioner to issue an order levying administrative penalties against any investment adviser  
24 for willful violations of any provision of the Corporate Securities Law of 1968 and any rules  
25 promulgated thereunder. Specifically, Corporations Code section 25252 provides, in relevant part:

26 The commissioner may, after appropriate notice and opportunity for hearing, by orders, levy  
27 administrative penalties as follows:

28 (b) Any broker-dealer or investment adviser that willfully violates any provision of this  
division to which it is subject, or that willfully violates any rule or order adopted or issued

pursuant to this division and to which it is subject, is liable for administrative penalties of not more than five thousand dollars (\$5,000) for the first violation, not more than ten thousand dollars (\$10,000) for the second violation, and not more than fifteen thousand dollars (\$15,000) for each subsequent violation.

14. By reason of the foregoing, Hull willfully violated California Code of Regulations, title 10, sections 260.241.2, subdivisions (a) and (d)(2)(A)(3), and 260.241.3, subdivision (j), justifying the imposition of administrative penalties. Hull, as a licensee, was obligated to have knowledge of, and to comply with, the provisions of the Corporate Securities Law of 1968 and the regulations thereunder to maintain its investment adviser certificate. Furthermore, on July 2, 1998, the Department notified Hull of the requirements of California Code of Regulations, title 10, sections 260.241.2, subdivisions (a) and (d)(2)(A)(3), and 260.241.3, subdivision (j). Hull violated these sections again despite Hull's assurances of future compliance after the first examination.

15. Therefore, pursuant to Corporations Code section 25252, the Commissioner seeks administrative penalties for Hull's failure to file annual financial statements, failure to prepare and maintain monthly trial balances and failure to file interim reports in willful violation of California Code of Regulations, title 10, section 260.241.3, subdivision (j), and section 260.241.2, subdivisions (a) and (d)(2)(A)(3).

WHEREFORE, good cause showing, and pursuant to Corporations Code section 25252, the California Corporations Commissioner prays for an order levying administrative penalties in the amounts as follows, for willful violations of the following sections of title 10 of the California Code of Regulations: section 260.241.3, subdivision (j) --\$750.00, section 260.241.2, subdivisions (a) --\$750.00, and (d)(2)(A)(3) -- \$750.00 for a total of \$2,250.00.

Dated: July 28, 2005  
Los Angeles, California

WAYNE STRUMPFER  
Acting California Corporations Commissioner

By: \_\_\_\_\_  
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Enforcement Division